

December 8, 2008

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TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS
DECEMBER 8, 2008

MEMBERS PRESENT: MICHAEL KANE, CHAIRMAN
KATHLEEN LOCEY
FRANCIS BEDETTI, JR.
PAT TORPEY
JAMES DITTBRENNER

ALSO PRESENT: ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

MYRA MASON
ZONING BOARD SECRETARY

ABSENT: MICHAEL BABCOCK
BUILDING INSPECTOR

REGULAR_MEETING

MR. KANE: I'd like to call the Town of New Windsor
Zoning Board of Appeals regular session of December 8,
2008 to order.

PUBLIC_HEARINGS:

DENNIS_SORICELLI_(08-34)

MR. KANE: No preliminary meetings tonight. Start up with our first public hearing, Dennis Soricelli. Request for 17 foot rear yard setback for proposed attached 12 x 20 rear deck at 511 Balmoral Circle in an R-4 zone. Come on up, Mr. Soricelli.

Mr. Dennis Soricelli appeared before the board for this proposal.

MR. KANE: Similar to the preliminary hearing, you want to tell us exactly what you want to do.

MR. SORICELLI: Put a deck on the back.

MR. KANE: You want to put, you're asking for a 17 foot rear yard setback for proposed 12 x 20 deck?

MR. SORICELLI: Yes.

MR. KANE: Any trees or substantial vegetation?

MR. SORICELLI: No.

MR. KANE: Any water hazards or runoff?

MR. SORICELLI: No.

MR. KANE: Any easements going through the area where you intend to put the deck?

MR. SORICELLI: No.

MR. KANE: And the deck is going to be a second story deck, how far off the ground?

MR. SORICELLI: Nine feet.

MR. KANE: Is the deck similar in size and nature to other decks in your neighborhood?

MR. SORICELLI: Yeah.

MR. KANE: The deck itself, is there an exit coming out of the house, is that going to go where these two windows are?

MR. SORICELLI: Yes.

MR. KRIEGER: If the deck weren't there, a person could fall and sustain personal serious injury?

MR. SORICELLI: Yes, they would definitely fall out.

MR. KANE: At this point, I will open it up to the public and ask if there's anybody in the audience for this particular hearing? Seeing as there's not, we'll close it, bring it back to Myra, ask her how many mailings we had.

MS. MASON: On the 25th of November, I mailed out 68 addressed envelopes and had no responses.

MR. KANE: That's good. Any further questions from the board? I'll accept a motion.

MR. DITTBRENNER: I move we approve the application of Dennis Soricelli at 511 Balmoral Circle for a 17 foot rear yard setback for the addition of a proposed 12 x 20 deck.

MR. BEDETTI: I'll second that.

ROLL CALL

MR. DITTBRENNER	AYE
MR. BEDETTI	AYE

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MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

MR. KANE: You're all set.

ROBERT_GELLMAN_(08-33)

MR. KANE: Next public hearing is Robert Gellman request for 31 foot rear yard setback for existing 12 x 14 foot deck at 21 Hillview Drive.

Mr. Robert Gellman appeared before the board for this proposal.

MS. LOCEY: It appears we also have a front yard.

MR. KANE: Right, it's just not in the minutes for tonight, it's noted in the public notice so just want to read it into the minutes. And he's also here for a an existing 7 x 15 foot covered front porch which does not meet the 45 setback so you're requesting a 29 foot front yard variance?

MR. GELLMAN: Correct.

MR. KANE: The front, let's take the back deck first, existing back deck 12 x 14, any substantial vegetation or trees cut down in the building of the deck?

MR. GELLMAN: No.

MR. KANE: Create any water hazards or runoff?

MR. GELLMAN: No.

MR. KANE: Any easements running through where the deck is?

MR. GELLMAN: No.

MR. KANE: How long has the deck been up approximately?

MR. GELLMAN: Since 1990.

MR. KANE: Any complaints about it formally or

informally?

MR. GELLMAN: No.

MR. KANE: Similar in size and nature to other decks in your neighborhood?

MR. GELLMAN: Yes.

MR. KANE: Front porch, rear yard setback. How long has that been in existence?

MR. GELLMAN: Early on.

MR. KANE: Came with the house if I remember correctly?

MR. GELLMAN: Yes.

MR. KANE: Does the porch itself extend further than closer to the road than any other homes that are on your side of the road?

MR. GELLMAN: No.

MR. KANE: Any complaints about the porch formally or informally?

MR. GELLMAN: No.

MR. KANE: To your knowledge, cut down any trees, substantial vegetation in the building of the deck?

MR. GELLMAN: No.

MR. KANE: Create any water hazards or runoffs?

MR. GELLMAN: No.

MR. KANE: At this point, we'll open it up to the public, ask if there's anybody here for this particular

hearing? There's not, we'll close the public portion.
Turn it back to Myra, how many mailings did we have?

MS. MASON: On the 25th of November, I mailed out 16
addressed envelopes and we had no responses.

MR. KANE: Any further questions from the board? I'll
accept a motion.

MS. LOCEY: I will offer a motion to grant the
requested variances both for a 29 foot front yard
variance and a 31 foot rear yard variance on the
application of Robert Gellman at 21 Hillview Drive.

MR. TORPEY: I'll second that.

ROLL CALL

MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

DIANE_&_NEAL_PALMER_(08-32)

MR. KANE: Next hearing is Diane and Neal Palmer request for 8.8 foot side yard setback for an existing shed and 8.5 foot side yard setback for detached existing shed and carport at 73 Beaver Brook Road.

Mr. and Mrs. Neal Palmer appeared before the board for this proposal.

MR. KANE: Please state your name and address, tell us what you want to do, speak loud enough for the young lady over there to hear you.

MRS. PALMER: Diane Palmer and my husband, Neal. We're requesting an 8 foot side yard setback for existing shed which has been up for 20 years.

MR. KANE: It's 8.8. The shed itself has been up 20 years?

MRS. PALMER: Yes.

MR. KANE: Any complaints over the 20 years formally or informally?

MRS. PALMER: Never.

MR. KANE: Cut down substantial trees or vegetation?

MR. PALMER: No, didn't cut down any trees.

MR. KANE: Create any water hazards or runoff?

MRS. PALMER: No.

MR. KANE: Any easements where the deck is?

MRS. PALMER: No.

MR. KANE: That takes care of the first set. That's for the 8.8 side yard setback.

MRS. PALMER: Right.

MR. KANE: On the 8.5 for the existing detached shed, about how long has that been around approximately?

MRS. PALMER: Ten, eight.

MR. PALMER: Twelve to fifteen years.

MR. KANE: creating any water hazards or runoff?

MRS. PALMER: No.

MR. KANE: Cut down any substantial vegetation?

MR. PALMER: It's on the driveway.

MR. KANE: Any complaints formally or informally?

MR. PALMER: Not that I know about.

MR. KANE: Is it sitting on top of any easements?

MR. PALMER: No, no easements.

MR. KANE: Is that particular shed similar in size and nature to other sheds that are in your neighborhood? It's not overly big?

MR. PALMER: There's sheds all over.

MRS. PALMER: It's got a garage door.

MR. KANE: It fits in your neighborhood?

MR. PALMER: Yeah, it's low.

MR. KANE: Same thing with the carport, about how long has the carport been in existence?

MR. PALMER: The carport's been there about maybe 12 years, the other one's been there longer.

MR. KANE: Cutting down any vegetation or trees?

MR. PALMER: No, it's on the driveway.

MR. KANE: Any water hazards or runoff?

MR. PALMER: No.

MR. KANE: Still got to ask the questions even if I see it in the picture. Any complaints formally or informally over the years?

MRS. PALMER: Not that I know of.

MR. PALMER: Not that we're aware of.

MR. KANE: No easements running through the carport area?

MR. PALMER: No.

MRS. PALMER: No.

MR. KANE: At this point, I will ask if there's anybody in the audience for this particular hearing? Seeing as there's not, we'll bring it back to Myra, ask her how many mailings we had.

MS. MASON: On the 25th of November, I mailed out 40 addressed envelopes and had no responses.

MR. KANE: Bring it back to the board, ask if they have any further questions?

MS. LOCEY: No.

MR. KANE: I'll accept a motion.

MR. BEDETTI: I will make a motion that we grant the variances to Diane and Neal Palmer as requested for 8.8 foot side yard setback for an existing shed and 8.5 foot side yard setback for a detached existing shed and carport at 73 Beaver Brook Road in an R-4 zone.

MS. LOCEY: I'll second that motion.

ROLL CALL

MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

ROGER_ARNOLD_(08-36)

MR. KANE: Last is Roger Arnold, Request for use variance for home with second kitchen all at 13 Marotta Drive.

Mr. Kenneth Lytle appeared before the board for this proposal.

MR. KRIEGER: Use variance and/or interpretation?

MR. KANE: Use variance and/or interpretation, correct? By law, there's five conditions that you have to cover and two of them being that it's not a self-created hardship and the other is that the property cannot get a reasonable return for a use for an existing use on it, reasonable return doesn't mean sell it for a profit, just that you can't sell it to somebody that wouldn't use it as a single-family home, that's going to be a tough hurdle to go across. You're on.

MR. LYTLE: Good evening, Ken Lytle representing Mr. and Mrs. Arnold living at 13 Marotta Drive. They're an existing home, they did an addition back on it in '87 going for a two family at that time, went ahead, got the building inspector who come in did the inspections, got the C.O. at that time for it, understood that she was approved for a two family. They have been taxed on it as a two family for all these years. The assessor has taken the property card, switched it from a 210 use for a single family to a 220 which is for a two family. We have copies of the Central Hudson bills which you asked for last time. We're here showing there's been two meters ever since '87.

MR. KANE: Since 1987?

MR. LYTLE: Yes, I have copies for the file.

MR. KANE: Keep going.

MR. LYTLE: They need to have, based on the two family they need to have 120,000 square feet, they only have 51,836, they need a variance for 68,164, the lot width they need to have 175 feet, they have 166 feet existing, they need a 9 foot variance for that, the side yards they need to have 40 feet minimum, they have 34 on the closest, total side yard they're okay with.

MR. KANE: Wait a minute, we need to stop. Has any of that been presented and put in for public notice, all the variances you're talking about?

MS. MASON: Request for use variance for house with second kitchen to be used as two-family home.

MR. KRIEGER: I'm somewhat confused, is a two family an allowed use in this zone or not?

MS. MASON: What zone is this?

MR. KANE: R-3.

MS. MASON: I'm not positive.

MR. BEDETTI: I think it is but as an area doesn't meet the area requirements.

MS. MASON: It's either the area variance--

MR. KRIEGER: Well, that's the problem, if it's an allowed use and he's short area then it's an area variance, not a use variance, if it's not an allowed use in that zone, it's a use variance.

MR. LYTLE: Just said it's the area we needed.

MR. KRIEGER: Do we have a denial?

MR. KANE: Yes, variance for a minimum lot area of

68,164, minimum lot width 9 feet and required side yard of 6 feet is required but did that make the public notice?

MS. MASON: No.

MR. KANE: We can't do this.

MS. MASON: No, wait a minute. What went into the notice? Was the request for a use variance for a house with second kitchen to be used as two-family house?

MR. KANE: Not a use variance, it's a lower use.

MR. KRIEGER: If it's an allowed use it's an area variance.

MR. KANE: It's not a use variance, it's right here on the denial, it's two-family dwelling 300 use bulk table line 7 two-family dwelling so variance for minimum lot area, lot width and required side yard setback but this is, that's not what was put in the paper. We can't have this then.

MR. KRIEGER: Not if it's not in the public notice, it's an absolute requirement.

MR. KANE: I mean it makes things light years easier than what we were talking about before with the use variance but we can't do it tonight.

MS. MASON: So it's an area variance not a use variance?

MR. KANE: With three requests right here.

MS. MASON: Are you sure it's allowed in that zone?

MR. KRIEGER: Well--

MR. KANE: R-3 zone line 7, two-family dwelling so right there it's telling you exactly where the use bulk and what the requirements are for that two-family dwelling, I would say I'm 99.9 percent positive it's allowed but it wasn't filed in the public, it was filed in the public as a use variance, not area variances, we need to get the area variances in the newspaper, has to be, we don't have a choice.

MR. KRIEGER: Otherwise it wouldn't specify the space.

MR. KANE: Because then it would be almost a pre-existing. So it would be January.

MR. LYTLE: Use variance is much more difficult.

MR. KANE: Use variance is almost impossible as I stated before you even get to the other stuff those two will nip it in the bud.

MR. KRIEGER: The other one it's difficult because it's not a self-created hardship.

MR. KANE: Yes, and the reasonable return, those two are almost impossible, this is an area variance, a much simpler variance than what we normally go through.

MR. LYTLE: Do I have to re-notify?

MR. KANE: It has to by law go into the paper.

MS. MASON: Just put it in the paper, not the letters.

MR. KANE: Ten days before and our next meeting is the second Monday in January. Basically, it was put in the paper as a use variance, you don't need a use variance, you're allowed to have a second family home in an R-3 zone. Basically, what it is is it's three area variances that did not make the paper. It has to be by law in the paper for ten days before we can have a

public hearing on it. So you don't need to notify, send out to your neighbors again, we don't need to do that, we do need to get it into the paper for ten days before our next hearing. Our next hearing is the second Monday in January so we're going to have to get that into the newspaper.

MR. ARNOLD: Do we get it in?

MS. MASON: I do.

MR. KANE: I was just explaining what happened.

MS. MASON: Just the timing.

MR. KANE: It's not a use, you're allowed to have a two-family home where you live so what we're doing is, what they're doing is straightening up all of the lot area, the minimum lot width and required side yard variances so it's an allowed use but we have to have that ten days in the newspaper before a public hearing, it's mandatory.

MR. BEDETTI: The first notice that went to the neighbors, what did it state in that notice?

MS. MASON: Same thing as what went in the paper.

MR. BEDETTI: Which was a use variance?

MS. MASON: Right.

MR. BEDETTI: You're telling me that those neighbors don't have to be notified that the variance has changed?

MR. KRIEGER: Now that it's a lesser requirement no because they had notice of this hearing and they had an opportunity to be here if they had something to say and so they don't have to be given another opportunity.

MR. KANE: And we're letting everybody that's here already know that it's going to be that second meeting, that first meeting, second Monday in January, that would be Monday the 12th of January is when we'll have that. You guys will be on that agenda, okay? Do you understand what was going on?

MR. ARNOLD: Yes.

MS. LOCEY: I think somebody should doublecheck that it's an allowable use.

MR. KANE: The way it's written right in here absolutely, take a look at the disapproval right on the line where the says 300-10 use bulk table, R-3 zone, line 7, two-family dwelling, those are the requirements for a two family in an R-3 zone. I will definitely doublecheck it with Mike but everything--

MR. BEDETTI: That's correct, that's the way it reads.

MS. MASON: Even when it's an interpretation or use variance they always put that.

MR. KANE: So no, we don't have to send out new mailings on that, it's a lesser charge and the people that are here were notified.

MS. LOCEY: Did you have any response to the mailings?

MS. MASON: No, just that one fella that was here and he was against it so--

MS. LOCEY: So he'll be back.

MR. KANE: He'll be back and we'll see cause it's not a use.

MS. LOCEY: It's already being used as a two-family

dwelling?

MR. KANE: It's been being used since 1988, electric bills, everything so it's, and it's not a use, it's all the area variances, so they're allowed to use it as a two-family house, just got to straighten everything up.

MR. BEDETTI: Trying to think back when they were here last when that was originally used as two family wasn't that for a family member?

MR. KANE: Honestly don't remember.

MR. KRIEGER: Legally speaking, it's irrelevant, if they have permission for a two family they can use it as a two family whether whoever occupies the other part of it doesn't matter. If it's not a two family that's a different matter. Now, if it were where it would be relevant also if it were a pre-existing non-conforming use since the definition of family in our code includes grandparents and so forth, the question would arise would they in fact have been using it as a one family thereby losing their pre-existing, non-conforming status. But here we're not dealing with a pre-existing, non-conforming status, we're dealing with a use by right and in that this, they can't, even if they use it as a one family they can't unilaterally do away with their legal status.

MR. KANE: What they want to do is use it as a two family which they are allowed to do but they need to straighten up all the area variances that are required for a two-family house, little different than a single family house.

MR. LYTLE: Thank you.

MR. KANE: Motion to adjourn?

MR. BEDETTI: So moved.

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MR. DITTBRENNER: Second it.

ROLL CALL

MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

Respectfully Submitted By:

Frances Roth
Stenographer

